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must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. Questions regarding these issues will be resolved by an appropriate health care provider at the VA health care facility of jurisdiction.

(Authority: 38 U.S.C. 501, 1708)

§ 60.7 Duration of temporary lodging.

Temporary lodging may be furnished to eligible persons in connection with care or C&P examinations provided at a VA health care facility. When a veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section. Temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8 a.m., would be unable to arrive at the health care facility by the time of the scheduled care. Temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7 p.m.

(Authority: 38 U.S.C. 501, 1708)

§ 60.8 Lodging availability.

Fisher Houses are available solely for temporary lodging under this part. Non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. Temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility of jurisdiction. Temporary lodging will be provided on a first-come first-serve basis.

(Authority: 38 U.S.C. 501, 1708)

§ 60.9 Decisionmaker.

Except as otherwise provided in this part, the person responsible for coordinating the temporary lodging program at the VA health care facility of juris-

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diction is responsible for making decisions under this part.

(Authority: 38 U.S.C. 501, 1708)

§ 60.10 Costs.

Costs for temporary lodging under this part shall be borne by VA.

(Authority: 38 U.S.C. 501, 1708)

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

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AUTHORITY: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*.

SOURCE: 68 FR 13594, Mar. 19, 2003, unless otherwise noted.

§61.0 Purpose.

This part implements the VA Homeless Providers Grant and Per Diem Program which consists of the following components: capital grants, per diem, special needs grants, and technical assistance grants.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§61.1 Definitions.

For purposes of this part:

Area or community means a political subdivision or contiguous political subdivisions (such as precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans.

Capital grant means a grant for construction, renovation, or acquisition of a facility; or for acquisition of a van.

Capital lease means a lease that will be in effect for the full period in which VA may recover all or portions of the capital grant amount under this part.

Chronically mentally ill means a condition of schizophrenia or major affective disorder (including bipolar disorder) or post-traumatic stress disorder (PTSD), based on a diagnosis from a licensed mental health professional, with at least one documented hospitalization for this condition sometime in the last 2 years or with documentation of a formal assessment on a standardized scale of any serious symptomology or serious impairment in the areas of work, family relations, thinking, or mood.

Fee means a fixed charge for a service offered by a recipient under this part, that is in addition to the services that are outlined in the recipient's application; and are not paid for by VA per diem or provided by VA, (e.g., cable television, recreational outings, professional instruction or counseling).

Fixed site means a physical structure that under normal conditions is not capable of readily being moved from one location to another location.

Frail elderly means 65 years of age or older with one or more chronic health problems and limitations in performing

one or more activities of daily living (such as bathing, toileting, transferring from bed to chair, etc.)

Homeless means: (1)(i) Lacking a fixed, regular and adequate nighttime residence; or

(ii) Having a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for persons intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The term homeless does not include imprisonment or other detainment pursuant to Federal or State law. Imprisonment or other detainment does not include probation, parole or electronic custody.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Nonprofit organization means a private organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must be recognized as a 501(c)(3) or 501(c)(19) nonprofit organization by the United States Internal Revenue Service, and:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of supportive housing and supportive services assistance.

Operating costs means expenses incurred in operating supportive housing, supportive services or service centers with respect to:

(1) Administration (including staff salaries; costs associated with accounting for the use of grant funds, preparing reports for submission to VA, obtaining program audits, and securing accreditation; and similar costs related to administering the grant after the award), maintenance, repair and security for the supportive housing;

(2) Van costs or building rent (except under capital leases), e.g., fuel, insurance, utilities, furnishings, and equipment;

(3) Conducting on-going assessments of supportive services provided for and needed by participants and the availability of such services;

(4) Other costs associated with operating the supportive housing.

Outpatient health services means outpatient health care, outpatient mental health services, outpatient alcohol and/or substance abuse services, and case management.

Participant means a person receiving services based on a grant or per diem provided under this part.

Public entity includes:

(1) A county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government, and

(2) The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Bureau of Indian Affairs.

Rehabilitation means the improvement or repair of an existing structure. Rehabilitation does not include minor or routine repairs.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or in-

strumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Supportive housing means housing with supportive services provided for homeless veterans and is:

(1) Transitional housing, or

(2) A part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless veterans.

Supportive services means services, which may be designed by the recipient or program participants, that provide appropriate services or assist such persons in obtaining appropriate services to address the needs of homeless veterans to be served by the project. Supportive services does not include inpatient acute hospital care, but does include:

(1) Outreach activities;

(2) Providing food, nutritional advice, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;

(3) Establishing and operating child care services for dependents of homeless veterans;

(4) Providing supervision and security arrangements necessary for the protection of residents of supportive housing and for homeless veterans using supportive housing or services;

(5) Providing assistance in obtaining permanent housing;

(6) Providing education, employment counseling and assistance, and job training;

(7) Providing assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling and assistance, veterans' benefits, medical assistance, and income support assistance; and

(8) Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

Terminally ill means a prognosis of 9 months or less to live based on a written medical diagnosis from a physician.

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VA means the Department of Veterans Affairs.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§61.10 Capital grants—general.

(a) VA provides capital grants to public or nonprofit private entities so they can assist homeless veterans by helping to ensure the availability of supportive housing and service centers to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing. Specifically, VA provides capital grants for up to 65 percent of the cost to:

(1) Construct structures and purchase the underlying land to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers;

(2) Acquire structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers;

(3) Renovate existing structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers; and

(4) Procure vans (purchase price, sales taxes, and title and licensing fees) to provide transportation or outreach for the purpose of providing supportive services.

(b) Capital grants may not be used for acquiring buildings located on VA-owned property. However, capital grants may be awarded for construction, expansion, or renovation of buildings located on VA-owned property.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§61.11 Applications for capital grants.

(a) To apply for a capital grant, an applicant must obtain from VA a capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of

Fund Availability under §61.60 of this part.

(b) The capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the capital grant;

(2) Site description, site design, and site cost estimates;

(3) Documentation on eligibility to receive a capital grant under this part;

(4) Documentation on matching funds committed to the project;

(5) Documentation on operating budget and cost sharing;

(6) Documentation on supportive services committed to the project;

(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served;

(8) If capital grant funds are proposed to be used for acquisition or rehabilitation, documentation demonstrating that the costs associated with acquisition or rehabilitation are less than the costs associated with new construction;

(9) If grant funds are proposed to be used for new construction, documentation demonstrating that the costs associated with new construction are less than the costs associated with rehabilitation of an existing building, that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction, and that new construction is less costly than acquisition of an existing building, (for purposes of this cost comparison, costs associated with rehabilitation or new construction may include the cost of real property acquisition);

(10) If the proposed construction includes demolition, a demolition plan, including the extent and cost of existing site features to be removed, stored, or relocated and information establishing that the proposed construction is in the same location as the building to be demolished or that the demolition is inextricably linked to the design of the construction project (the cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is

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inextricably linked to the design of the construction project);

(11) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and

(12) Reasonable assurances with respect to receipt of a capital grant under this part that:

(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;

(ii) The recipient will continue to operate the project until the expiration of the period during which VA could seek recovery under §61.67;

(iii) Title to such site or van will vest solely in the applicant and the applicant will insure vans to the same extent they would insure a van bought with their own funds;

(iv) Adequate financial support will be available for the completion of the project or for the purchase and maintenance, repair, and operation of the van; and

(v) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(c) Applicants may apply for more than one capital grant.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§61.12 Threshold requirements for capital grant applications.

To be eligible for a capital grant, an applicant must meet the following threshold requirements:

(a) The application was completed in all parts and included the information called for in the application package and was filed within the time period es-

tablished in the Notice of Fund Availability;

(b) The applicant is a public or non-profit private entity;

(c) The population proposed to be served is homeless veterans;

(d) The activities for which assistance is requested are eligible for funding under this part;

(e) The applicant has demonstrated that adequate financial support will be available to carry out the project for which the capital grant is sought consistent with the plans, specifications and schedule submitted by the applicant;

(f) The application has demonstrated compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655);

(g) The applicant has agreed to comply with the requirements of this part and has demonstrated the capacity to do so;

(h) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and

(i) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§61.13 Rating criteria for capital grant applications.

(a) Applicants that meet the threshold requirements in §61.12 of this part, will then be rated using the selection criteria listed in this section. To be eligible for a capital grant, an applicant must receive at least 600 points (out of a possible 1,200) and must receive points under criteria in paragraphs (b), (c), (d), (e), and (i) of this section.

(b) Quality of the project. VA will award up to 300 points based on the following:

(1) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;

(2) How program participants will increase their skill level and/or income, including how available supportive

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services will help participants reach this goal;

(3) How program participants will be involved in making project decisions that affect their lives so that they achieve greater self-determination, including how they will be involved in selecting supportive services, establishing individual goals and developing plans to achieve these goals;

(4) How permanent affordable housing will be identified and made known to participants upon leaving the transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;

(5) How the service needs of participants will be assessed on an ongoing basis;

(6) How the proposed housing, if any, will be managed and operated;

(7) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities, and services;

(8) How and when the progress of participants toward meeting their individual goals will be monitored, evaluated, and documented;

(9) How and when the effectiveness of the overall project in achieving its goals will be evaluated and documented; and how any needed program modifications will be made based on those evaluations; and how program modifications will be reported to VA; and

(10) How the proposed project will be implemented in a timely fashion.

(c) Targeting to persons on streets and in shelters. VA will award up to 150 points based on:

(1) The extent to which the project is designed to serve homeless veterans living in places not ordinarily meant for human habitation (e.g., streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(2) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(d) Ability of applicant to develop and operate a project. VA will award up to 200 points based on the extent to

which the application demonstrates experience in the following areas:

(1) Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;

(2) Assessing the housing and relevant supportive service needs of homeless veterans;

(3) Accessing housing and relevant supportive service resources;

(4) If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;

(5) If applicable, administering a rental assistance program;

(6) Providing supportive services or supportive housing for homeless veterans;

(7) Monitoring and evaluating the progress of persons toward meeting their individual goals;

(8) Evaluating the overall effectiveness of a program and using evaluation results to make program improvements, as needed; and

(9) Maintaining fiscal solvency as evidenced by providing their last complete yearly financial statements.

(e) Need. VA will award up to 150 points based on the extent to which the applicant demonstrates:

(1) Substantial unmet needs, particularly among the target population living in places not ordinarily meant for human habitation such as the streets, emergency shelters, based on reliable data from surveys of homeless populations or other reports or data gathering mechanisms that directly support claims made; and

(2) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(f) Innovative quality of the proposal. VA will award up to 50 points based on the innovative quality of the proposal, in terms of:

(1) Helping homeless veterans or homeless veterans with disabilities to reach residential stability, to increase their skill level and/or income, and to increase the influence they have over decisions that affect their lives;

(2) Establishing a clear link between the innovation(s) and its proposed effect(s); and

(3) Establishing usefulness as a model for other projects.

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(g) Leveraging. VA will award up to 50 points based on the extent to which the applicant documents resources from other public and private sources, including cash and the value of third party contributions, have been committed to support the project at the time of application.

(h) Cost-effectiveness. VA will award up to 100 points for cost-effectiveness. Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount, and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high-cost areas. Cost-effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(i) Coordination with other programs. VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include shelter transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other program providers relevant to the needs of homeless veterans in the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area. VA will award up to 50 points of the 200 points based on the extent to which commitments to provide supportive services are documented at the time of application. Up to 150 points of the 200 points will be given to the extent applicants demonstrate that:

(1) They are part of an ongoing community-wide planning process within the framework described above which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;

(2) They have consulted directly with the closest VA Medical Center and other providers within the framework

described above regarding coordination of services for project participants; and

(3) They have coordinated with the closest VA Medical Center their plan to assure access to health care, case management, and other care services.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§61.14 Selecting applications for capital grants.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a capital grant in accordance with their ranked order, as determined under §61.13 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from §61.13(e) of this part to determine the ranking.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§61.15 Obtaining additional information and awarding capital grants.

(a) Each applicant who has been conditionally selected for a capital grant will be requested by VA to submit additional information, including:

(1) Documentation to show that the project is feasible, including a plan from an architect, contractor, or other building professional that provides estimated costs for the proposed design;

(2) Documentation showing the sources of funding for the project and firm financing commitments for the matching requirements described in §61.16 of this part;

(3) Documentation establishing site control described in §61.17 of this part;

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(4) Documentation establishing compliance with the National Historic Preservation Act (16 U.S.C. 470);

(5) Information necessary for VA to ensure compliance both with Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act Accessibility Guidelines;

(6) Documentation establishing compliance with local and state zoning codes;

(7) Documentation in the form of one set of design development (35 percent completion) drawings demonstrating compliance with local codes, state codes, and the Life Safety Code of the National Fire Protection Association.

(8) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);

(9) A site survey performed by a licensed land surveyor; and

(10) Such other documentation as specified by VA in writing to the applicant to confirm or clarify information provided in the application.

(b) The required additional information must be received by VA in acceptable form within the time frame established by VA in a Notice of Fund Availability published in the FEDERAL REGISTER.

(c) Following receipt of the additional information in acceptable form, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part and other applicable provisions of this part.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554.)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§ 61.16 Matching funds for capital grants.

The amount of a capital grant may not exceed 65 percent of the total cost of the project for which the capital grant was awarded. The recipient must, from sources other than grant funds received under this part, match the funds provided by VA to cover the percentage of the total cost of the project not

funded by the capital grant. This matching share shall constitute at least 35 percent of the total cost. If the project is for supportive housing, or a service center that would be used for purposes under this part and for other purposes, a capital grant may be awarded only in proportion to the use under this part. Capital grants may include application costs, including site surveys, architectural, and engineering fees, but may not include relocation costs.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.17 Site control for capital grants.

(a) As a condition for obtaining a capital grant for supportive housing or a fixed site service center, an applicant must demonstrate site control through a deed, a capital lease, or an executed contract of sale, unless the site is in a building or on land owned by VA. Such site control must be demonstrated within 1 year after execution of an agreement under § 61.61 of this part.

(b) A capital grant recipient may change the site to a new site meeting the requirements of this part subject to VA approval under § 61.62 of this part. However, the recipient is responsible for and must demonstrate ability to provide for any additional costs resulting from the change in site.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554.)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§ 61.20 Life Safety Code capital grants.

(a) This section sets forth provisions for obtaining a Life Safety Code capital grant under 38 U.S.C. 2012(c)(3). To be eligible to receive such a capital grant, an applicant already must have received a grant under section 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102-590; 38 U.S.C. 7221 *note*) for construction, renovation, or acquisition of a facility and must obtain the Life Safety Code capital grant solely

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for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association. The following sections of this part apply to the Life Safety Code grants §§61.60 through 61.66; and §61.80 and §61.82.

(b) To apply for a Life Safety Code capital grant under this section, an applicant must obtain from VA a Life Safety Code capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability. The Life Safety Code capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the modifications needed to meet the Life Safety Code or such other comparable fire and safety requirements;

(2) Site description, site design, and site cost estimates;

(3) Reasonable assurances with respect to receipt of a Life Safety Code capital grant under this part that:

(i) The project being renovated is being, and will continue to be, used principally to furnish veterans the level of care for which VA awarded the applicant a grant under the Homeless Veterans Comprehensive Service Program Act of 1992; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;

(ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based;

(iii) The applicant has agreed to comply with the applicable requirements of this part and has demonstrated the capacity to do so;

(iv) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and

(v) The applicant is not in default, by failing to meet requirements for any previous assistance from VA.

(c)(1) Cost-effectiveness. VA will award up to 300 points for cost-effec-

tiveness with adjustments for high-cost areas. Applicants should address the following:

(i) Estimated cost of the renovation and the type of work to be done;

(ii) Estimated cost of any displacement of program participants or services due to the renovation; and

(iii) Cost-benefit analysis addressing the benefit of renovation to the structure compared to moving program to another site.

(2) Coordination. VA will award up to 200 points for a summary countersigned by the local VAMC Facilities Management of the discussions concerning renovation plans. The summaries should detail the following:

(i) Urgency of the renovation;

(ii) Adequacy of the renovation; and

(iii) Opinion of feasibility and cost benefit.

(d) The highest-ranked applications for the Life Safety Code capital grants for which funding is available will be selected to receive grants in accordance with their ranked order. The amount awarded will be 100 percent of the estimated total cost of the renovation as stated in the Life Safety Code application (this may include application costs, architectural fees, and engineering fees). VA will execute an agreement and make payments to the Life Safety Code capital grant recipient in accordance with §61.61 of this part and other applicable provisions of this part. In the event of a tie between applicants, VA will use the score from §61.20(c)(2) of this part to determine the ranking.

(e) Applicants may apply for more than one Life Safety Code capital grant.

(f) The authority to provide Life Safety Code grants expires on December 21, 2006.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§61.30 Per diem-general.

VA provides per diem funds to capital grant recipients or to entities eligible

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to receive a capital grant, which established a program of supportive housing or services after November 10, 1992 so they can assist homeless veterans by helping to offset operating costs to ensure the availability of supportive housing and service centers tasked with furnishing outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.31 Application for per diem.

(a) To apply for per diem, a capital grant recipient need only indicate the intent to receive per diem on the capital grant application or may separately request per diem by submitting to VA a written statement requesting per diem.

(b) To apply for per diem, a non-capital grant recipient must obtain from VA a non-capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability. The non-capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

- (1) Justification for per diem;
- (2) Documentation on eligibility to receive per diem under this part;
- (3) Documentation on operating budget and cost sharing;
- (4) Documentation on supportive services committed to the project;
- (5) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and
- (6) Reasonable assurances with respect to receipt of per diem under this part that:
 - (i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;
 - (ii) Adequate financial support will be available for the per diem program; and

(iii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§ 61.32 Ranking non-capital grant recipients for per diem.

(a) Applications from non-capital grant recipients in response to a Notice of Fund Availability will be reviewed and grouped in categories according to the funding priorities set forth in the NOFA, if any. Such applications will then be ranked within their respective funding category according to scores achieved only if the applicant scores at least 500 cumulative points from paragraphs (b), (c), (d), (e), and (i) of § 61.13 of this part. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected for eligibility to receive per diem payments in accordance with their ranked order. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.13(e) of this part to determine the ranking.

(c) All applicants responding to a NOFA for "Per Diem Only" will be subject to the ranking method in paragraph (a) of this section.

NOTE TO § 61.32: Capital grant recipients are not required to be ranked, however, continuation of per diem payments to capital grant recipients will be subject to limitations set forth in § 61.33 of this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.33 Payment of per diem.

(a) A capital grant recipient meeting the application requirements as outlined in § 61.31(a) of this part is eligible for per diem subject to a site inspection establishing that the applicant continues to meet the requirements for a capital grant as outlined in the following sections, §§ 61.62, 61.64, 61.65, 61.66, 61.80, 61.81, and 61.82.

(b) For non-capital grant recipients who apply for per diem under this part, funds will be allocated to the highest-ranked applicants in descending order until funds are expended. Payments will be contingent upon verification of application information based on an initial site inspection and other inspections pursuant to § 61.66 of this part and will be made for 3 years or as otherwise specified in the Notice of Fund Availability. Non-capital grant recipients may apply again thereafter only in response to a Notice of Fund Availability.

(c) For those applicants selected to receive per diem, VA will execute an agreement in accordance with § 61.61 of this part and make payments to the grant recipient or non-grant recipient for those homeless veterans—

(1) Who VA referred to the grant recipient or non-grant recipient; or

(2) For whom VA authorized the provision of supportive housing or supportive service.

(d)(1) The rate of per diem payments for each veteran in supportive housing shall be the lesser of—

(i) The daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of State and local governments, from private entities or organizations, and from program participants), or

(ii) The current VA State Home Program per diem rate for domiciliary care.

(2) The per diem amount for service centers shall be 1/8 of the lesser of the amounts in paragraphs (d)(1)(i) and (d)(1)(ii) of this section per hour, not to exceed 8 hours in any day.

(e) Per diem payments may be paid retroactively for services provided not more than 3 days before VA approval is given or, where through no fault of the recipient, per diem payments should have been made but were not made. VA will not pay per diem for any additional days of absence when a veteran has already been absent for more than 72 hours consecutively (scheduled or unscheduled). In addition, VA will not pay per diem payments for supportive housing for any homeless veteran who has had three or more episodes (admission and discharge for each episode) of supportive housing services paid for under this part. VA may waive the episode requirement if the services offered are different from those previously provided and may lead to a successful outcome.

(f) Payment of per diem is subject to availability of funds. When necessary due to funding limitations, VA will reduce the rate of per diem as necessary.

(g) Capital grant recipients and non-capital grant recipients may continue to receive per diem assistance only so long as they continue to meet the minimum eligibility requirements for obtaining a grant. For grant recipients this is the minimum 600 points as provided for in § 61.13(a) of this part. For non-grant recipients this is the minimum 500 points provided for in § 61.32(a) of this part.

(h) Per diem payments will not be paid for both supportive housing and supportive services provided to the same veteran by the same per diem recipient.

(i) For non-capital grant recipients, only those portions of the service center or supportive housing described in the application will be considered for per diem assistance.

(j) At the time of receipt, a per diem recipient must report to VA all other sources of income for the project for which per diem was awarded. The information in this paragraph provides a basis for adjustments to the per diem payment.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003; 68 FR 34332, June 9, 2003]

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§ 61.40 Special needs grants—general.

(a) VA provides special needs grants to capital grant and per diem recipients under this part to assist with additional operational costs that would not otherwise be incurred but for the fact that the recipient is providing beds or services in supportive housing and at service centers for the following homeless veterans:

(1) Women, including women who have care of minor dependents;

(2) Frail elderly;

(3) Terminally ill; or

(4) Chronically mentally ill.

(b) No part of a special needs grant may be used for any purpose that would change significantly the scope of the project for which a capital grant or per diem was awarded.

(c) The following sections of this part apply to special needs grants: §§ 61.60 through 61.66; and § 61.80; § 61.82.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.41 Special needs grants application.

(a) To apply for a special needs grant, an applicant must obtain from VA a special needs grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability.

(b) The special needs grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the special needs grant;

(2) Documentation on eligibility to receive a special needs grant under this part;

(3) Documentation concerning the estimated operating costs for the needs of the specific population for which the special needs grant is requested;

(4) Documentation concerning supportive services committed to the project;

(5) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and

(6) Reasonable assurances with respect to receipt of a special needs grant under this part that:

(i) The funds will be used to furnish to veterans the level of care for which such application is made; and that the special needs program will comply with applicable requirements of this part;

(ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based; and

(iii) Adequate financial support will be available for the special needs program.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§ 61.42 Threshold requirements for special needs grant applications.

To be eligible for a special needs grant, an applicant must meet the following threshold requirements:

(a) The application included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;

(b) The applicant still meets the requirements for receipt of per diem;

(c) The activities for which assistance is requested are eligible for funding under this part;

(d) The applicant has demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant;

(e) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit;

(f) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part; and

(g) The applicant has agreed to comply with applicable requirements of this part, to maintain eligibility for

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special need payments and has demonstrated the capacity to do so.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.43 Rating criteria for special needs grant applications.

(a) Applicants that meet the threshold requirements in § 61.42 of this part, will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a special needs grant, an applicant must receive at least 300 points (out of a possible 500) and must score points in all areas (paragraphs (b)(1) through (c)(3)).

(b) VA will award up to 200 points based on the extent to which the applicant demonstrates why the service, operation, or personnel for which the special needs grant:

- (1) Is needed for the project;
- (2) Is integral to the project;
- (3) Is appropriate to the population and overall project design; and
- (4) Meets the special needs population provided per diem in the previous year.

(c) VA will award up to 300 points based on the extent the applicant's goals, objectives, and measures for the population to be served are:

- (1) Appropriate;
 - (2) Reasonable; and
 - (3) Measurable.
- (d) The information provided under paragraphs (b) and (c) of this section for women, including women who have care of minor dependents, should demonstrate how the program design will:
- (1) Ensure transportation for women and their children, especially for health care and educational needs;
 - (2) Provide directly or offer referrals for adequate and safe child care;
 - (3) Ensure children's health care needs are met especially age appropriate wellness visits and immunizations; and
 - (4) Address safety and security issues including segregation procedures from other program participants if deemed appropriate.
- (e) The information provided under paragraphs (b) and (c) of this section for the frail elderly should demonstrate how the program design will:

(1) Ensure the safety of the residents in the facility to include preventing harm and exploitation;

(2) Ensure opportunities to keep residents mentally and physically agile to the fullest extent through the incorporation of structured activities, physical activity, and plans for social engagement within the program and in the community;

(3) Provide opportunities for participants to address life transitional issues and separation and/or loss issues;

(4) Provide access to assistance devices such as walkers, grippers, or other devices necessary for optimal functioning;

(5) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(6) Provide opportunities for participants either directly or through referral for other services particularly relevant for the frail elderly, including services or programs addressing emotional, social, spiritual, and generative needs.

(f) The information provided under paragraphs (b) and (c) of this section for the terminally ill should demonstrate how the program design will:

(1) Help participants address life-transition and life-end issues;

(2) Ensure that participants are afforded timely access to hospice services;

(3) Provide opportunities for participants to engage in "tasks of dying," or activities of "getting things in order" or other therapeutic actions that help resolve end of life issues and enable transition and closure;

(4) Ensure adequate supervision including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants either directly or through referral for other services particularly relevant for terminally ill such as legal counsel and pain management.

(g) The information provided under paragraphs (b) and (c) of this section for the chronically mentally ill should demonstrate how the program design will:

(1) Help participants join in and engage with the community;

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(2) Facilitate reintegration with the community and provide services that may optimize reintegration such as life-skills education, recreational activities, and follow up case management;

(3) Ensure that participants have opportunities and services for re-establishing relationships with family;

(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants, either directly or through referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.44 Awarding special needs grants.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a special needs grant in accordance with their ranked order, as determined under § 61.43 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.43(b) of this part to determine the ranking.

(c) For those applicants selected for a special needs grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part.

(d) The amount of the special needs grant will be the estimated total operational cost of the special need over

the life of the special needs grant award as specified in the special needs grant agreement. Payments may be made for no more than 3 years. Recipients may apply again thereafter only in response to a Notice of Fund Availability.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.50 Technical assistance grants-general.

VA provides grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients are to use the grants to provide technical assistance to those nonprofit community-based groups with experience in providing assistance to homeless veterans in order to help such groups apply for grants under 38 CFR part 61 or apply for other grants from any source for addressing the problems of homeless veterans. This includes:

(a) Group or individual seminars providing general instructions concerning grant applications;

(b) Group or individual seminars providing instructions for applying for a specific grant; or

(c) Group or individual instruction for preparing analyses to be included in a grant application.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.51 Applications for technical assistance grants.

(a) To apply for a technical assistance grant under this part, an applicant must obtain from VA a technical assistance grant application package and submit to VA the information called for in the technical assistance grant application package within the time period established in the Notice of Fund Availability.

(b) The technical assistance grant application package includes exhibits to be prepared and submitted as part of the application process, including

(1) Justification for the technical assistance grant;

(2) Documentation on eligibility to receive a technical assistance grant under this part;

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(3) Description of type of technical assistance that would be provided (see § 61.50);

(4) Documentation concerning the estimated operating costs and operating budget for the technical assistance program for which a grant is sought;

(5) Documentation concerning expertise in preparing grant applications;

(6) Documentation on resources committed to the provision of technical expertise;

(7) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and

(8) Reasonable assurances with respect to receipt of a technical assistance grant under this part that:

(i) The recipient will provide adequate financial and administrative support for providing the services set forth in the technical assistance grant application and will actually provide such services; and

(ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§ 61.52 Threshold requirements for technical assistance grant applications.

To be eligible for a technical assistance grant, an applicant must meet the following threshold requirements:

(a) The application included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;

(b) The applicant established expertise in preparing grant applications;

(c) The activities for which assistance is requested are eligible for funding under this part;

(d) The applicant has demonstrated that adequate financial support will be

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available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant;

(e) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and

(f) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.53 Rating criteria for technical assistance grant applications.

(a) Applicants that meet the threshold requirements in § 61.52 of this part, will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a technical assistance grant, an applicant must receive at least 600 points (out of a possible 800) and must score points under paragraphs (b) and (c) of this section.

(b) Quality of the technical assistance. VA will award up to 400 points based on the following:

(1) How the recipients of technical training will increase their skill level regarding the completion of applications;

(2) How the recipients of technical training will learn to find grant opportunities in a timely manner;

(3) How the technical assistance provided will be monitored and evaluated and changes made, if needed; and

(4) How the proposed technical assistance programs will be implemented in a timely fashion.

(c) Ability of applicant to demonstrate expertise in preparing grant applications develop and operate a technical assistance program. VA will award up to 400 points based on the extent to which the application demonstrates:

(1) Ability to find grants available for addressing the needs of homeless veterans;

(2) Ability to find and offer technical assistance to entities eligible for such assistance;

(3) Ability to administer a technical assistance program;

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(4) Ability to provide grant technical assistance; and

(5) Ability to evaluate the overall effectiveness of the technical assistance program and to make adjustments, if necessary, based on those evaluations.

§ 61.54 Awarding technical assistance grants.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a technical assistance grant in accordance with their ranked order, as determined under § 61.53 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.53(c) of this part to determine the ranking.

(c) For those applicants selected to receive a technical assistance grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part.

(d) The amount of the technical assistance grant will be the estimated total operational cost of the technical assistance over the life of the technical assistance grant award as specified in the technical assistance grant agreement. Payments may be made for no more than 3 years. Recipients may apply again thereafter only in response to a Notice of Fund Availability.

(e) The amount of a technical assistance grant under this part may not exceed the cost of the estimated cost of the provision of technical assistance.

(f) VA will not pay for sustenance or lodging under a technical assistance grant.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.55 Technical assistance reports.

Each recipient of a technical assistance grant must submit to VA, quarterly, a report describing the activities for which the technical assistance grant funds were awarded, including the type and amount of technical assistance provided and the number of nonprofit community-based groups served.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§ 61.60 Notice of Fund Availability.

When funds are made available for capital grants, per diem for non-capital grant recipients, special needs grants, or technical assistance grants, VA will publish a Notice of Fund Availability in the FEDERAL REGISTER. The notice will:

(a) Give the location for obtaining application packages;

(b) Specify the date, time, and place for submitting completed applications;

(c) State the estimated amount and type of funding available; and

(d) State any priorities for or exclusions from funding to meet the statutory mandate of 38 U.S.C. 2011, to ensure that awards do not result in the duplication of ongoing services and to reflect the maximum extent practicable appropriate geographic dispersion and an appropriate balance between urban and nonurban locations.

(e) Provide other information necessary for the application process.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.61 Agreement and funding actions.

(a) When an applicant for a capital grant, per diem, a special needs grant, or a technical assistance grant meets all of the requirements under this part for the type of assistance requested and VA has funding for such assistance, VA will incorporate requirements under this part into an agreement to be executed by VA and the applicant. Upon

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execution of the agreement, grant funds are obligated to cover the amount of the approved assistance subject to the availability of funding. Payments will be for services rendered and are contingent upon submission of documentation in the form of invoices or purchase agreements and contingent on inspections, as VA deems necessary. VA will make payments on its own schedule to reimburse for amounts expended.

(b) Except for increases in the rate of per diem, VA will not make revisions to increase the amount obligated for assistance under this part after the initial obligation of funds.

(c) VA will enforce the obligations under this part through such action as may be appropriate, including temporarily withholding cash payments pending correction of a deficiency.

(d) VA may deobligate all or parts of assistance awarded under this part:

(1) If the actual total costs for assistance is less than the total cost stated in the application, or

(2) If the recipient fails to comply with the requirements of this part.

(e) However, before determining whether to deobligate under paragraph (d)(2) of this section, VA will issue a notice of intent to terminate payments. The recipient will then have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision concerning termination of payment.

(f) VA may also seek recovery under § 61.67 of this part where a capital grant recipient fails to provide supportive services and/or supportive housing for the minimum period of operation under § 61.67.

(g) Where a recipient has no control over causes for delays in implementing a project, VA may change the due date, as appropriate.

(h) Grant recipients that concurrently receive per diem and special needs payments shall not be paid more than 100 percent of the cost of the bed per day, product, operation, personnel, or service provided.

(i) No funds provided under this part may be used to replace Federal, State or local funds previously used, or des-

ignated for use, to assist homeless veterans.

(j) VA may obligate any recovered funds without fiscal year limitation.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.62 Program changes.

(a) Except as provided in paragraphs (b) through (d) of this section, a recipient may not make any significant changes to a project for which a grant has been awarded without prior VA approval. Significant changes include, but are not limited to, a change in the recipient, a change in the project site (including relocating, adding an annex, a branch, or other expansion), additions or deletions of activities, shifts of funds from one approved type of activity to another, and a change in the category of participants to be served.

(b) Recipients of grants exceeding \$100,000 for nonconstruction projects must receive prior VA approval for cumulative transfers among direct cost categories which exceed or are expected to exceed 10 percent of the current total approved budget.

(c) Recipients of grants for projects involving both construction and nonconstruction who are State or local governments must receive prior VA approval for any budget revision which would transfer funds between nonconstruction and construction categories.

(d) Approval for changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

(e) Any changes to an approved program must be fully documented in the recipient's records.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.63 Procedural error.

If an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if

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there is no material change in the information that resulted in its selection. A new application will not be required for this purpose.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.64 Religious organizations.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in VA programs under this part. In the selection of service providers, neither the Federal Government nor a state or local government receiving funds under this part shall discriminate for or against an organization on the basis of the organization's religious character or affiliation.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Inherently religious activities such as, religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, "indirect financial assistance" means Federal assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the independent and private choices of individual beneficiaries. "Direct financial assistance," means Federal aid in the form of a grant, contract, or cooperative agreement where the independent choices of individual beneficiaries do not determine which organizations receive program funds.

(c) Organizations that engage in inherently religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA, and participation in any of the organization's inherently religious activities must be voluntary for the beneficiaries of a program or service funded by direct financial assistance from VA.

(d) A religious organization that participates in VA programs under this part will retain its independence from Federal, State, or local governments and may continue to carry out its mis-

sion, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a State or local government voluntarily contributes its own funds to supplement Federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where VA funds are provided to religious organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of this Part. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that

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beneficiary and designed to give that beneficiary a choice among providers.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

[69 FR 31888, June 8, 2004]

§ 61.65 Inspections.

VA may inspect the facility and any records of an entity applying for or receiving assistance under this part at such times as are deemed necessary to determine compliance with the provisions of this part. The authority to inspect carries with it no authority over the management or control of any entity applying for or receiving assistance under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

§ 61.66 Financial management.

(a) All recipients shall comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133.

(b) All entities receiving assistance under this part must use a financial management system that follows generally accepted accounting principals and provides accounting records, including cost accounting records that are supported by documentation. Such cost accounting must be reflected in the entity's fiscal cycle financial statements to the extent that the actual costs can be determined for the program for which assistance is provided. All entities receiving per diem under this part must monitor the accuracy of the costs used to determine payment amounts per veteran. Entities receiving assistance must meet the applicable requirements of the appropriate OMB Circular for Cost-Principles (A-122 or A-87).

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note)

§ 61.67 Recovery provisions.

(a) If after 3 years from the date of award of a capital grant, the grant recipient has withdrawn from the VA Homeless Providers Grant and Per Diem Program (Program); does not establish the project for which the grant was made; or has established the project for which the grant was made but has not had final inspection, VA

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would be entitled to recover from the grant recipient all of the grant amounts provided for the project.

(b) Where the grant recipient is not subject to recovery under paragraph (a) of this section, VA will seek recovery of the grant amount on a prorated basis where the grant recipient ceases to provide services for which the grant was made or withdraws from the Program prior to the expiration of the applicable period of operation, which period shall begin on the date of final inspection for which the grant was made. The amount to be recaptured equals the total amount of the grant, multiplied by the fraction resulting from using the number of years the recipient was not operational as the numerator, and using the number of years of operation required under the following chart as the denominator.

Grant amount (dollars in thousands)	Years of operation
0-250	7
251-500	8
501-750	9
751-1,000	10
1,001-1,250	11
1,251-1,500	12
1,501-1,750	13
1,751-2,000	14
2,001-2,250	15
2,251-2,500	16
2,501-2,750	17
2,751-3,000	18
Over 3,000	20

Example A: Grantee A is awarded a grant and does not bring the project to operational status within 3 years from the time of award. Grantee A may be subject to full recapture of the grant award.

Example B: Grantee B is awarded a grant in the amount of \$300,000 and brings the project to operational status within 3 years from the time of award. Grantee B then provides services to homeless veterans for a period of 6 years from the date the program was operationalized, but now decides to close the program. As the original award was \$300,000 and as a condition of receiving the grant funds Grantee B agreed to provide services for 8 years. Therefore, Grantee B would be subject to the prorated recapture of the grant award for the 2-year period not served or in this case 1/4 of the original grant would be subject to recapture.

Example C: Grantee C is awarded a grant in the amount of \$400,000, becomes operational within 1 year of the date of the grant award and ceases operation 1 year later, 2 years after the date of the grant award. After the expiration of the 3-year period beginning on

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the date of the grant award, Grantee C would be subject to prorated recapture for the 7 years it did not provide service of the required 8 years of operation. The amount subject to recapture would thus be $7/8 \times \$400,000$ or \$350,000.

(c) VA will seek to recover from the recipient of per diem, a special needs grant, or a technical assistance grant any funds that are not used in accordance with the requirements of this part.

(d) Before VA would take action to recover funds, VA will issue to the recipient a notice of intent to recover funds. The recipient will then have 30 days to submit documentation demonstrating why funds should not be recovered. After review of any such documentation, VA will issue a decision regarding whether action will be taken to recover funds.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.80 General operation requirements for supportive housing and service centers.

(a) Supportive housing and service centers for which assistance is provided under this part must:

(1) Comply with the Life Safety Code of the National Fire Protection Association and all applicable State and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the supportive housing or service centers.

(2) Notwithstanding the provisions of paragraph(a)(1) of this section, recipients of grants prior to December 21, 2001, are required to comply with the Life Safety Code of the National Fire Protection Association by December 21, 2006. Such recipients are not excused from meeting the other requirements of paragraph (a)(1) of this section, including State and local fire and safety requirements.

(b) Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:

(1) The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements;

(2) Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire;

(3) Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required by section 502 of the Americans with Disabilities Act, referred to as the Architectural Barriers Act;

(4) Each resident must be afforded appropriate space and security for themselves and their belongings, including an acceptable place to sleep that is in compliance with all applicable local, state, and federal requirements;

(5) Every room or space must be provided with natural or mechanical ventilation and the structures must be free of pollutants in the air at levels that threaten the health of residents;

(6) The water supply must be free from contamination;

(7) Residents must have access to sufficient sanitary facilities that are in proper operating condition, that may be used in privacy, and that are adequate for personal cleanliness and the disposal of human waste;

(8) The housing must have adequate heating and/ or cooling facilities in proper operating condition;

(9) The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents and sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire;

(10) All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(11) The housing and any equipment must be maintained in a sanitary manner;

(12) The residents with disabilities must be provided meals or meal preparation facilities must be available;

(13) Residential supervision from a paid staff member, volunteer, or senior

resident participant must be provided 24 hours per day, 7 days per week and for those times that a volunteer or senior resident participant is providing residential supervision a paid staff member must be on call for emergencies 24 hours a day 7 days a week (all supervision must be provided by individuals with sufficient knowledge for the position); and

(14) Residents must be provided a clean and sober (free from illicit drugs) environment and those supportive housing or service centers that provide medical or social detox at the same site as the supportive housing or service must ensure that those residents in detox are clearly separated from the general residential population.

(c) Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project and the availability of such services, and make adjustments as appropriate. The recipient will provide evidence of this ongoing assessment to VA at such times as are deemed necessary, but as a minimum, once annually in the form of a report that addresses the recipient's ability to meet the goals, objectives, measures, and special needs as set forth in the recipient's grant proposal.

(d) A homeless veteran may remain in transitional housing for which assistance is provided under this part for a period no longer than 24 months, except that a veteran may stay longer, if permanent housing for the veteran has not been located or if the veteran requires additional time to prepare for independent living. However, at any given time, no more than one-half of the veterans at such transitional housing facility may have resided at the facility for periods longer than 24 months.

(e) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project provided under this part. This requirement may be waived if an appli-

cant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.

(f) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project.

(g) Each recipient of assistance under this part shall establish procedures for fiscal control and fund accounting to ensure proper disbursement and accounting of assistance received under this part.

(h) The recipient of assistance under this part that provides family violence prevention or treatment services must establish and implement procedures to ensure:

(1) The confidentiality of records pertaining to any individual provided services, and

(2) The confidentiality of the address or location where the services are provided.

(i) Each recipient of assistance under this part must maintain the confidentiality of records kept on homeless veterans receiving services.

(j) VA may disapprove use of outpatient health services provided through the recipient if VA determines that such services are of unacceptable quality. Further, VA will not pay per diem where the Department concludes that services furnished by the recipient are unacceptable.

(k) A service center for homeless veterans shall provide services to homeless veterans for a minimum of 40 hours per week over a minimum of 5 days per week, as well as provide services on an as-needed, unscheduled basis. The calculation of average hours shall include travel time for mobile service centers. In addition:

(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;

(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;

(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area; and

(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.

(1) Fixed site service centers will prominently post at or near the entrance to the service center their hours of operation and contacts in case of emergencies. Mobile service centers must take some action reasonably calculated to provide in advance a tentative schedule of visits, (e.g., newspapers, fliers, public service announcements on television or radio). The schedule should include but is not limited to:

- (1) The region of operation;
- (2) Times of operation;
- (3) Expected services to be provided; and
- (4) Contacts for specific information and changes.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[68 FR 13594, Mar. 19, 2003, as amended at 68 FR 55468, Sept. 26, 2003]

§ 61.81 Outreach activities.

Recipients of capital grants and per diem under this part relating to supportive housing or service centers must use their best efforts to ensure that eligible hard-to-reach veterans are found, engaged, and provided assistance. Accordingly, a recipient should search for homeless veterans at places such as shelters, soup kitchens, parks, bus or train stations, and the streets. Outreach particularly should be directed

toward veterans who have a nighttime residence that is an emergency shelter or a public or private place not ordinarily used as a regular sleeping accommodation for human beings (e.g., cars, streets, or parks).

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.82 Resident rent for supportive housing.

(a) Each resident of supportive housing may be required to pay rent in an amount determined by the recipient, except that such rent may not exceed 30 percent of the resident's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments.

(b) Resident rent may be used for costs of operating the supportive housing or to assist supportive housing residents move to permanent housing.

(c) In addition to resident rent, recipients may charge residents reasonable fees for services not covered by VA per diem funds and not otherwise provided by VA.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

PART 75—INFORMATION SECURITY MATTERS

Subpart A [Reserved]

Subpart B—Data Breaches

Sec.

- 75.111 Purpose and scope.
- 75.112 Definitions and terms.
- 75.113 Data breach.
- 75.114 Accelerated response.
- 75.115 Risk analysis.
- 75.116 Secretary determination.
- 75.117 Notification.
- 75.118 Other credit protection services.
- 75.119 Finality of Secretary determination.

AUTHORITY: 38 U.S.C. 501, 5724, 5727, 7906.

SOURCE: 72 FR 34399, June 22, 2007, unless otherwise noted.

Subpart A [Reserved]